IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2064 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RUBY COACH BUILDERS PVT. LTD., & 1 - Petitioner(s)
Versus
STATE OF GUJARAT NOTICE TO BE SERVED THROUGH & 1 - Respondent(s)

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Appearance :
MR KM THAKAR for M/S TRIVEDI & GUPTA for Petitioner(s) : 1 - 2.
MR UDAY R BHATT, AGP for Respondent(s) : 1,
MR BP TANNA,Sr.Advocate with Ms. Mahrook Kerrawala for Respondent: 2,
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 24/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The present petition has been filed by the petitioner no.1, which is a body builder, and the petitioner no.2, who happens to be the Director of the petitioner no.1. According to the petitioner, gray chassis are brought in municipal limits of Ahmedabad, so that body is built over the said gray chassis and after the job work is completed, chassis along with the body over it goes back to the customer who has sent the vehicle for body building. According to the petitioner, Section 2(42) of the Bombay Provincial Corporations Act, 1949 [B.P.M.C. Act], defines octroi and leviability of the same and octroi can be levied in form of cess on the goods brought into the limits of a city for consumption, use or sale therein. According to the petitioners as the goods brought in the limits of the township are neither consumed nor used nor sold, but after the job work is completed, are returned back to its owner, no octroi is leviable.

2. The respondents have made different submissions and have stated that in accordance with the powers conferred upon them, they have framed Rules regarding octroi exercising their powers under section 457(7) read with section 149(1) of the B.P.M.C. Act. According

to them, Rule-12 relates to refund of the octroi recovered. Clause-[b] of sub-rule[3] of Rule 12 of the Octroi Rules would allow refund in case the goods since their import have not changed hands or their original form or condition, state or appearance by any process of manufacture or otherwise. According to them, as the chassis was converted either into a truck or in a bus, the item imported within the limits of the Corporation has lost its identity, then, octroi is leviable and the same cannot be refunded.

3. Mr. Thakar, learned counsel for the petitioner, however, submitted that the rules framed by the Corporation run beyond the powers conferred upon them and as Section 2(42) authorises the Corporation to impose octroi in case the goods imported are used, consumed or sold, then, clause-[b] of sub-rule [3] of Rule-12 is beyond their legislative competence.

4. Unfortunately, the ground raised at Bar is not a ground in the writ application. In the writ application, the petitioners have not stated that the rules framed by the respondents are contrary to law or are ultra vires the Act or Constitution.

5. Where, an authority, after appreciating its rule making power has framed certain Rules, then, the said

Rules would apply with full force unless the validity of the said Rules is challenged.

6. As the action taken by the respondent is protected under clause [b] of sub-rule [3] of Rule 12 of the Octroi Rules, it cannot be argued by the petitioner that the action taken by the respondent is patently illegal.

7. The petition deserves to and is accordingly dismissed. Rule is discharged. Inter relief stands vacated. No costs.

8. On 27.5.86, the Court had issued an interim order in favour of the petitioner, directing inter alia, that the petitioner shall pay at the time of import of goods at the check-post 50% of the octroi duty, legally leviable by the Corporation and for the rest 50% he shall furnish general security. The Court also observed that in case the petitioner fails, then, interest at the rate of 18% per annum shall be payable by one of the party to the other successful party. As we are dismissing the petition, the petitioner is hereby directed to pay balance amount of the octroi duty, if any, with 18% interest within a period of eight weeks from today. In case the due amount is not paid within a period of eight weeks, the respondents would be

entitled to take appropriate coercive action in accordance with law.

(***R. S. Garg, J.***)

(***Ravi R. Tripathi, J.***)

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